

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Otter Tail
Power Company for Approval of its 2006
Capital Structure and Permission to Issue
Securities.

ISSUE DATE: July 11, 2006

DOCKET NO. E-017/S-06-219;
E,G-001/S-06-208

In the Matter of Interstate Power and Light
Company's Annual Capital Structure

ORDER REAFFIRMING APRIL 27, 2006
ORDERS

PROCEDURAL HISTORY

On April 27, 2006, the Commission issued Orders in Docket Nos. E-017/S-06-219 and E,G-001/S-06-208, approving the capital structure of Otter Tail Power Company (Otter Tail) and Interstate Power and Light Company (Interstate).

On June 1, 2006, Commissioner Nickolai moved to reconsider the above orders, on the grounds that they do not comport with the Commission's statutory duties under Minn. Stat. 216B.49. The motion for reconsideration passed.

FINDINGS AND CONCLUSIONS

Prior to 1998, Minn. Stat. 216B.49 directed the Commission to approve a capital structure. The statute at that time read as follows;

It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness **unless the capital structure of the public utility shall first be approved by the commission** (emphasis added).

The statute now reads:

It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness **unless the security issuance of the public utility shall first be approved by the commission** (emphasis added).

The question posed is whether the Commission's Orders in these matters reflect the requirements of the current law, or the requirements of the pre-1998 law.

After thoughtful discussion by the parties and the Department of Commerce, the Commission determined that it will reaffirm the April 27, 2006, Orders with respect to Otter Tail and Interstate.

In addition, the Commission will open a new docket, to discuss whether the Commission's current practice for approving the yearly capital structure of utilities complies with Minn. Stat. § 216B.49, following the 1998 amendment thereto. In this new docket, the issues raised can be fully developed and discussed by all interested parties. The Commission asks that Commission staff seek public comments on the effect of the revised language of the post-1998 statute and the current process utilized to evaluate capital structure of utilities regulated by the Commission.

ORDER

1. The Commission reaffirms its April 27, 2006, Orders in Docket Nos. E-017/S-06-219 and E,G-001/S-06-208.
2. The Commission will open a new docket to explore whether the process currently being utilized by the Commission for approval of a utility's capital structure is consistent with the current language of Minn. Stat. 216B.49. The Commission asks staff to seek comments on the revised statute and the process utilized to evaluate capital structure.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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